

11-14-02

AF/1600

Express Mail Label No. EV 057 397 363

Attorney Docket No. 59150-8011

NOV 12 2002

TO: H. G. PATENT CENTER 1600/2900

NEW 18 2002

RECEIVED

#21  
AKD  
11/19/02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: Lee and Kim  
SERIAL NO.: 09/499,693  
FILED: February 8, 2000  
FOR: HIGHER UNSATURATED FATTY  
ACID COMPOSITION

EXAMINER: L. Wells  
ART UNIT: 1617  
CONFIRMATION NO.: 1622

Assistant Commissioner for Patents  
Box AF  
Washington, D.C. 20231

Sir:

1. On August 9, 2002, Applicants timely filed a response under 37 CFR §1.111 in the above-referenced application.
2. On October 16, 2002, the United States Patent and Trademark Office (USPTO) mailed a final Office action.
3. In the final Office action, the Examiner cited new ground(s) of rejection based on three newly cited references and one reference previously of record.
4. The Examiner asserted that the "Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action." Applicants request reconsideration of this position for these reasons.
5. First, the claim amendments to independent claims 26, 30, 34, 38, and 42 merely rearranged the existing claim elements. No elements or limitations were added or removed. Before and after the claim amendments, the same claim elements were present.

6. According to MPEP §706.07(a) "[a] second or any subsequent action on the merits in any application ... should not be made final if it includes a rejection, on prior art not of record, or any claims amended to include limitations which should reasonably have been expected to be claimed."

7. Since the claim amendments in the response filed August 9, 2002 simply rearranged the claim elements, the Examiner knew or reasonably should have known what was already claimed.

8. Moreover, according to MPEP §706.07(a) "a second or subsequent action on the merits in any application....will not be made final if it includes a rejection, on newly cited art, of any claim not amended by applicant....in spite of the fact that other claims may have been amended to require newly cited art."

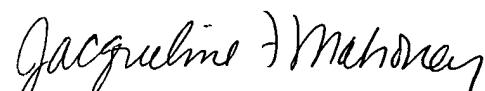
9. Applicants note that the Examiner has rejected claims that were not amended. Specifically, claims 27- 29, 31-33, 35-37, and 39-41 were not amended, but are rejected on the newly cited art.

10. Accordingly, Applicants respectfully withdrawal of the finality of the Office action.

No fees are believed due with this petition, however, the Commissioner is authorized to charge any fees deemed due for timely consideration of this petition to Deposit Account No. 50-2207.

If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is encouraged to call the undersigned at (650) 838-4410.

Respectfully submitted,



Jacqueline F. Mahoney  
Registration No. 48,390

Date: Nov. 12, 2002

**Correspondence Address:**

Customer No. 22918

Phone: (650) 838-4300